



PERMANENT MISSION  
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**S T A T E M E N T**

by

**Dr. Peter KLANDUCH**

Legal Adviser  
Ministry of Foreign and European Affairs  
of the Slovak Republic

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Mr. Chair,

Slovakia fully aligns itself with the statement made on behalf of the European Union and its Member States. I will now provide further remarks in my national capacity on each of three draft articles in cluster 2, namely the definition of crimes against humanity, general obligations, and the obligation of prevention.

My delegation is pleased to observe that the definition in draft article 2 reflects, to a large extent, the definition of crimes against humanity contained in Article 7 of the Rome Statute of the International Criminal Court. We are fully aware of the fact that the latter was tailored specifically for the purpose of the exercise of the jurisdiction of the Court, and thus its authors might have taken a more cautious approach. At the same time, we wish to recall that the “Rome definition” was based on previous substantial work of the Commission and a series of inclusive meetings of preparatory bodies in the lead up to the diplomatic conference of 1998 and the negotiations during the Rome conference in which the delegations of more than 160 States participated. Therefore, setting the point of reference in the Rome Statute is legitimate and reasonable and does not in any way affect the rights and obligations of the non-States parties. Slovakia is open to further exchange of views on any additional elements that may warrant incorporation in the definition. In any case, my delegation fully concurs with the Commission’s approach which demonstrates a high degree of consistency and predictability, and fully supports the current wording of draft article 2.

Let me also briefly point to other elements of the definition. Slovakia understands the requirements for an attack to be “widespread” or “systematic” as disjunctive. Both attributes exclude isolated or unrelated acts. However, while “widespread” refers to the number of victims (without any specific threshold), “systematic” articulates the requirement of non-incident repetition of similar criminal conduct. Moreover, such attacks must be directed “against any civilian population” regardless of any distinctive features of its members. We also share the Commission’s view that it is the intention of the attack rather than its physical result which is the critical component of crimes against humanity. Regarding the requirement for attacks to be “pursuant to or in furtherance of a State or organizational policy” we are of the view that this sub-topic might be suitable for further substantive exchanges. We are also

satisfied with removing the “war nexus”. The fact that crimes against humanity can occur in times of peace only reflects the current status and the development of international law after Nuremberg. The “no prejudice” clause follows the model of prior legal instruments providing the necessary flexibility for States that wish to enact broader definitions in their domestic legal orders.

Mr. Chair,

I will now address jointly draft articles 3 and 4. They both regulate obligations of States and are closely interrelated. We note with satisfaction that the first two provisions of draft article 3 are in line with the relevant case law of the International Court of Justice referred to on various occasions in the Commission’s report.

The passive obligation not to engage in acts constituting crimes against humanity is a confirmation of a well-established rule that even if State cannot commit a crime under international law, such conduct, if committed by organs or persons over whom State has control, can be attributable to a State and thus trigger that State’s responsibility. Importantly, this obligation includes not only the commission of such acts, but also aiding, directing or coercing. We are open to further discussions, as to whether those modes also encompass abetting or incitement to commit crimes against humanity, even if not specifically mentioned in the ILC commentaries.

The active obligation of States to prevent and punish crimes against humanity is equally important. It is directly linked with draft article 4 specifying two streams of the preventive obligation. Obligation of prevention is an obligation of conduct, as defined in Article 14, paragraph 3 of the Articles on Responsibility of States for Internationally Wrongful Acts and further confirmed by the jurisprudence of the ICJ. The breach of such obligation would only occur if crimes against humanity were actually committed.

Regarding paragraph 3 of draft article 3, we are pleased to note that the text does not limit the applicability of the provision only to the conduct of States.

Finally, draft article 4 is a reflection of a due diligence obligation to prevent crimes against humanity *ab initio*. We are very delighted that the ILC looked to the relevant treaties for inspiration. The “conformity with international law” in the chapeau does, as we understand, stem from the relevant jurisprudence and follows the logic of the preambular paragraphs. We look forward to hearing from other States if they deem that a more detailed or prescriptive nature of the preventive obligation is necessary. In our view, a broader and more flexible language chosen by the ILC is more appropriate. The commentaries provide good examples and clarifications what these preventive measures could and should be. Apart from the regulatory or legislative framework and its regular review, we appreciate the reference to educational and training programmes and activities. Second part of the preventive obligation is well rooted, among other similar multilateral treaties, also in the UN Charter. To our satisfaction, it also envisages the cooperation with other than intergovernmental organizations, which in many cases do possess extremely valuable knowledge, experience, and relevant data.

I thank you.